

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, ET AL., :
5 :
6 vs. :
7 BRIAN P. KEMP, ET AL., :
8 :
9 DEFENDANTS. :
10

11 TRANSCRIPT OF TELEPHONE CONFERENCE PROCEEDINGS

12 BEFORE THE HONORABLE AMY TOTENBERG

13 UNITED STATES DISTRICT JUDGE

14 NOVEMBER 7, 2017

15
16
17
18
19
20
21 10:35 A.M.

22 ~~MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED~~

23 ~~TRANSCRIPT PRODUCED BY:~~

24 ~~OFFICIAL COURT REPORTER:~~

25 ~~SHANNON R. WELCH, RMR, CRR~~
~~2394 UNITED STATES COURTHOUSE~~
~~75 TED TURNER DRIVE, SOUTHWEST~~
~~ATLANTA, GEORGIA 30303~~
~~(404) 215-1383~~

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

BRYAN MYERSON WARD
HOLCOMB & WARD, LLP

JOE ROBERT CALDWELL, JR.
STEPTOE & JOHNSON, LLP

FOR THE STATE OF GEORGIA DEFENDANTS:

ROY E. BARNES
JOHN FRANK SALTER, JR.
THE BARNES LAW GROUP, LLC

FOR THE FULTON COUNTY DEFENDANTS:

KAYE WOODARD BURWELL
CHERYL RINGER
DAVID R. LOWMAN

FOR THE DEKALB COUNTY DEFENDANTS:

BENNETT DAVIS BRYAN
DEKALB COUNTY DEPARTMENT OF LAW

FOR THE COBB COUNTY DEFENDANTS:

DANIEL WALTER WHITE
HAYNIE LITCHFIELD CRANE & WHITE

FOR MERLE KING:

ROBERT S. HIGHSMITH
GRANT SCHNELL
HOLLAND & KNIGHT, LLP - ATL

PROCEEDINGS

(Atlanta, Fulton County, Georgia; November 7, 2017.)

COURTROOM DEPUTY CLERK: Good morning, Counsel. This is Amy McConochie, Judge Totenberg's courtroom deputy clerk. The Court is joining the conference call in Civil Action Number 1:17-CV-2989. That is the case of *Curling vs. Kemp*.

7 Counsel, it sounds like we have a lot of participants
8 on the call. So I'm going to remind you that when you start
9 speaking you need to announce your name first so that both
10 Judge Totenberg and the court reporter, Ms. Welch, will know
11 who is speaking at any given time.

12 Now I'm going to ask you-all to please introduce
13 yourselves. So we will have a basic roll call starting with
14 plaintiffs' counsel. And then Judge Totenberg will be on the
15 line with you. Thank you.

16 MR. CALDWELL: For plaintiffs, it is Joe Caldwell,
17 Ms. McConochie.

18 | COURTROOM DEPUTY CLERK: Thank you.

19 MR. BARNES: This is Roy Barnes and John Salter. We
20 represent Kemp -- Secretary Kemp and the Board of Elections.

21 MR. WARD: This is Bryan Ward for plaintiffs as well
22 from Holcomb & Ward. And I know on the line as well is Marilyn
23 Marks for the Coalition of Good Governance -- Coalition for
24 Good Governance. Excuse me.

25 MR. WHITE: Daniel White is here for Cobb County

1 Board of Elections.

2 MR. BRYAN: Bennett Bryan is here for all the Dekalb
3 County defendants.

4 MS. BURWELL: Kaye Burwell, Cheryl Ringer, and David
5 Lowman for Fulton County.

6 THE COURT: Is that it? This is Judge Totenberg.

7 MR. HIGHSMITH: This is Robert Highsmith and Grant
8 Schnell representing Merle King. We have not yet formally
9 entered an appearance but will be doing so later this
10 afternoon.

11 THE COURT: I'm sorry. State your name again since I
12 didn't have it in front of me.

13 MR. HIGHSMITH: Robert Highsmith, H-I-G-H-S-M-I-T-H.

14 THE COURT: All right.

15 MR. HIGHSMITH: And Grant Schnell, S-C-H-N-E-L-L.

16 THE COURT: All right. Very good. Just one second.

17 **(There was a brief pause in the proceedings.)**

18 THE COURT: All right. Well, I asked for this phone
19 conference both because of the change of counsel and because of
20 the request on the plaintiffs' part to file a motion on
21 spoliation and just to sort of check in regarding what is
22 happening in the case.

23 We're in a weird posture of the case relative to the
24 spoliation issue that the plaintiffs raised. And technically,
25 of course, if you want that motion in front of me, I absolutely

1 do need a motion. But at the same time, I want to recognize
2 the reality that is a complicated one.

3 On one hand, the defendants did represent to the
4 Court that there was a preservation agreement and that you --
5 and there was a lot of discussion about preservation including
6 as to the State server is my recall. And on the other hand,
7 I'm in the position that I have so far stayed discovery in
8 order to deal with immunity issues.

9 So -- and, you know, I may end up just dealing with
10 immunity issues first so that we can get going one way or the
11 other or find out that I don't have jurisdiction because of
12 that. But it is immunity and jurisdiction issues that are the
13 preeminent reasons why the Court has stayed discovery. And
14 then that sort of relates to the spoliation issue. And yet I
15 still have a duty to ensure that evidence is not destroyed
16 here.

17 So I would like to know at this point what has the
18 State done to address the wiping of the data from the central
19 server operated by the Center for Election Systems.

20 MR. SALTER: This is John Salter for the record with
21 the Barnes Law Group. Your Honor, we made an appearance on
22 Friday, and we are getting up to speed on the case, including
23 the motions. There was -- we have been -- I think we just --
24 there was a report that was actually issued by the Secretary of
25 State.

1 It does appear that it is kind of a complicated issue
2 as to whether or not this particular server, which we don't
3 think was the central server -- and we don't think it had any
4 information that would actually, you know, lead to add
5 (undiscernible). By the way the plaintiffs describe it --

6 THE COURT: All right. Talk slower and closer to the
7 phone.

8 MR. SALTER: (Undiscernible.)

9 THE COURT: Stop. Stop. I'm sorry. Mr. Salter, I
10 can't hear you. So just be sure you're close to the phone and
11 speak slowly enough. Because somehow because of all the people
12 on the phone, it is very murky when you are speaking.

13 All right. So just go slow enough so that we're
14 going to be able to -- if the words are unclear that we can
15 have a chance at getting them. Thank you.

16 MR. SALTER: Okay. We don't -- let me shorten it up
17 for you, Your Honor. I don't think that what happened at
18 KSU -- my understanding -- and, again, those aren't my clients
19 in the case. But my understanding is that what they did
20 regarding this particular server was -- I believe it was even
21 known about or referenced in attachments to the very first
22 complaint that the plaintiffs filed. I think it was known by
23 all parties, as far as I understand, that this particular
24 server involved in the March incident was going to be
25 repurposed and taken out of circulation for the purposes that

1 it was used at CES. That is my very preliminary understanding.

2 Again, I am still getting up to speed on all that is
3 going on, all of the different iterations of the allegations,
4 which, of course, will define what is, quote-unquote, evidence
5 in the case.

6 I would also point out that when we get litigation
7 hold letters we look at those. People in litigation do. And
8 they generally rely on what is delineated out in that letter
9 and compare it with the allegations as they exist at the time.

10 The fact that the allegations have been kind of a
11 moving target with the different amendments and so on and so
12 forth --

13 THE COURT: All right. I don't want you to be making
14 a full argument on spoliation. I'm not accusing anyone of
15 spoliation at all. I'm asking a simple question, which was
16 what has the State done to address the wiping of the data from
17 the central server either by -- at the Center for Election
18 Systems.

19 I'm not saying that -- you made a lot of different
20 arguments. I didn't ask for any of that. I'm just trying
21 because we're not -- there is a lot I can't do in this case
22 until I rule on the jurisdiction issues.

23 On the other hand, I do have an obligation to make
24 sure that we're not going further into the hole and find out
25 what is being done. And I don't need to know about everything.

1 But I do need to know that I'm not sitting here while nothing
2 is happening to deal with a very serious issue.

3 MR. SALTER: Judge --

4 THE COURT: So if somebody has something -- actually
5 real information to provide me, that is what I want to hear,
6 including what has the State learned from the FBI, what is the
7 status of that, what is the length of time it is going to be to
8 find out what is available from the State. That is what I'm
9 looking for. Not who is at fault, that something was raised
10 earlier, or anything else.

11 I know that Mr. Salter and Mr. Barnes and others
12 weren't here in prior phone calls. But it was my certain
13 understanding that there were some clear preservation requests
14 that would be applicable here. I may be in error. But I'm not
15 trying to resolve that part now. I'm really just trying to
16 say: What has happened?

17 MR. HIGHSMITH: Your Honor, Robert Highsmith on
18 behalf of Merle King at the Center for Election Systems. Like
19 the Barnes Law Group, we were only engaged Friday. And so we
20 are working diligently to be prepared to give a full answer to
21 the Court's question.

22 It is my understanding that -- and I will only say
23 one sentence about the substantive issue of spoliation because
24 I heard Your Honor. It is our conclusion at this point that
25 nothing on that server even in July was relevant to the claims

1 then pending or that could have been reasonably anticipated to
2 be pending before the Court.

3 That said, we are prepared to reach out to the FBI by
4 subpoena, if necessary, to obtain the forensic image that we
5 believe exists of the server and obviously with the new claims
6 and new litigation hold information that the State law
7 department received on September 29th and, of course, moving
8 forward with us now representing Mr. King, you know, to
9 preserve all evidence as we are required to do under the
10 Court's rules and the litigation hold notices that we received
11 and when we have received them.

12 At this point, Your Honor, that is the sum total of
13 Holland & Knight's knowledge of the matter.

14 THE COURT: All right.

15 MR. BARNES: This is Roy Barnes. Could I say one
16 thing following up?

17 THE COURT: Yes.

18 MR. BARNES: Okay. First -- excuse me -- I agree
19 with what Robert says from our initial investigation. However,
20 you know, you need -- the plaintiff needs to say -- I mean,
21 we're not destroying anything. But, you know, it is an
22 ongoing -- we are having an election today. For example, 400
23 elections are happening today.

24 The plaintiff needs to tell us exactly what they are
25 saying that is in writing -- and I would suggest to you that it

1 should be by motion -- exactly what it is that we're to
2 preserve.

3 As I read the complaint and its iterations, I mean,
4 none of -- what happened at KSU was not relevant to this
5 complaint as Mr. Highsmith has spoken out. But I don't want to
6 have an inadvertent something that is claimed as spoliation.
7 Exactly what is it? Exactly what is it that needs to be
8 preserved?

9 I mean, we're running -- the State is running
10 elections all the time, and there is information that is going
11 back and forth. And just an amorphous saying, well, preserve
12 all evidence -- what is the evidence? Tell us what the
13 evidence is, and we will seek to preserve it.

14 I mean, nobody is trying to destroy anything. And --
15 but we need some certainty, and that is the reason -- and we
16 want a record built also. And that is the reason that they
17 should file a motion or at least give a notice. These are the
18 specific things that we want done -- that we want preserved.
19 Because you just can't stop the whole State of Georgia and say
20 don't touch anything with any computer because they are all
21 used in elections.

22 THE COURT: Mr. --

23 MR. CALDWELL: Your Honor, this is Joe Caldwell for
24 the plaintiffs. I will say that I sent a litigation hold
25 letter that was dated September 12th to all parties. I'm

1 hearing from some of them that they say they received it on
2 September 29th. But it was very, very specific.

3 I know that prior to our entry into the case in late
4 August that Bryan Ward's firm representing the plaintiffs at
5 that time had a litigation hold letter that was circulated in
6 or around July 25th, I believe it was. Those were very
7 specific.

8 But with respect to the CES server, the argument from
9 defendants that it is not related is one that remains
10 unexplained to us. That server was the central server that
11 programmed the other connections to it, both the GEMS servers
12 of the counties, the DREs, et cetera. And to the extent that
13 it is plaintiffs' desire to try to determine if there were
14 vulnerabilities in the electronic voting systems, that server
15 was clearly central.

16 It sounds, Your Honor, like from the comments of
17 counsel that still the State has not served its subpoena on the
18 FBI. And even if it has served its subpoena on the FBI, that
19 subpoena doesn't go far enough. That subpoena seeks to obtain
20 a copy of the forensic image that was taken by the FBI during
21 the period of March 3rd to March 17th.

22 But there is additional information that the FBI may
23 have related to that server that we also want to have
24 preserved. We're not asking that it be produced at this time
25 either in response to the subpoena or to us. Nor are we saying

1 that it is admissible at this time.

2 What we're merely saying is that it needs to be
3 preserved at this time for later determination about whether
4 there is something that is relevant to this litigation within
5 that computer.

6 If at this point no subpoena has been served, then we
7 remain as vulnerable now as we were at the time that we brought
8 this to the attention of the Court.

9 THE COURT: All right. Well, let me ask -- let me
10 ask the parties this. We have a bunch of new counsel. And I
11 know you're coming up to speed. But -- and you'll have to come
12 up to speed very quickly.

13 But is there any reason why you-all can't have a
14 phone conference and actually focus on whatever has been
15 requested now? If there is something that the defendants are
16 seeking clarification about, ask directly the plaintiffs'
17 counsel to do that. If you want, you can have a court reporter
18 there so that you-all just have a very clear record of what
19 you're talking about. It is not necessary. But it is a
20 feasible thing so that there is no confusion about it.

21 But is there any reason why you can't do that?
22 Basically all the letters that -- the plaintiffs can provide
23 you again all the letters that have been provided in case there
24 is any confusion about that and any e-mails that might still
25 have confirmed what was going to happen, what the agreement

1 was, and if it preceded the July 25th date as well. And you
2 have a phone conference and really -- because you are all in
3 different places, and you allocate enough time to really hammer
4 this out.

5 Is there -- what is the problem with that, if any?

6 MR. CALDWELL: Your Honor, again, Joe Caldwell for
7 the plaintiffs. I would be willing to circulate to opposing
8 counsel a draft preservation order so that we could use it as a
9 basis. And then we can all submit our respective amendments to
10 it and discuss in the hopes of submitting it to the Court. So
11 that within the next two or three days, we could have it to the
12 Court so that a preservation order could be entered.

13 I would still worry about what is in the FBI's
14 possession about whether they are or are not deleting data on
15 their copy of the server's data. But we can certainly
16 circulate that draft order.

17 THE COURT: Well, you could come to some agreement
18 about the scope of whatever the subpoena is that is going to be
19 sent included in that. I can't -- obviously, the FBI is not
20 before me. But at least agreeing as to the scope of the
21 subpoena would make a difference.

22 All right. What is the defendants' position as to
23 that?

24 MR. BARNES: Your Honor, Number 1 -- I'm sorry. This
25 is Roy Barnes. Number 1 is he can circulate, you know,

1 whatever he wants. But I want this to follow the rules of the
2 court. Make a motion. Show why that is relevant. Let us
3 reply. Let the -- and if it requires an evidentiary hearing,
4 then the Court can have one and make the ruling.

5 This business of just saying, well, preserve
6 everything and for no reason and for -- in trying to hamper the
7 ongoing operation of the State Board of Elections seems a
8 little bit too broad.

9 Number 2, if counsel has a problem with the FBI, he
10 needs to contact the FBI too. I don't -- I'm not a conspiracy
11 fellow. I don't believe the FBI is over there in some kind of
12 big conspiracy. I mean, he can contact the FBI.

13 Sometimes they don't even pay attention to federal
14 judges. And so I don't -- but I don't believe they destroyed
15 any kind of evidence. They came in and mirrored the server.

16 THE COURT: I don't know that they did.

17 Mr. Barnes -- Governor Barnes, I don't know that they mirrored
18 the server. I don't know any of that. And I just want to
19 interrupt you, in fact.

20 I understand I can have a hearing and do all of this.
21 But it seems almost unlike you, frankly, not to at least have a
22 phone -- have an actual substantive conversation. I don't know
23 that they are asking for the world. And maybe you are right.

24 But why wouldn't the preliminary thing before you-all
25 spend -- basically burn up another forest be simply to have a

1 true conversation and really try to figure out whether you can
2 resolve something that is going to work for this case and also
3 not hamper -- excessively hamper the State.

4 Yes, the State has elections. Of course, the real
5 election is today. We're not talking about necessarily
6 forever. But why wouldn't you -- I don't understand why you
7 wouldn't at least sit down and see as new counsel whether there
8 is something you could hammer out that works? And you of all
9 people are extremely gifted in the art of the deal.

10 MR. BARNES: Well, I don't have any -- I don't have
11 any problem with that. But what I'm saying is: Before any
12 order is entered, I want to be sure that we're heard about that
13 with the proper procedures.

14 I mean, we don't have any problem in preserving
15 things. I mean, we don't have any problem whatsoever. And we
16 have preserved. But I just -- what I don't like is, you know,
17 sending e-mails to the Court, and then it precipitating all of
18 this without some -- I mean, why didn't counsel send me that to
19 start with? This is what we want preserved. And we have tried
20 to abide by that.

21 Now, Robert Highsmith, I think, may have something
22 because I heard him trying to get in.

23 MR. HIGHSMITH: I'm sorry, Governor. I didn't mean
24 to step on you.

25 MR. BARNES: That is all right. No. No. No.

1 MR. HIGHSMITH: Your Honor, we hear you. And
2 absolutely for Mr. King -- this is -- again, this is Robert
3 Highsmith for Mr. King. We absolutely are willing to confer
4 with Mr. Caldwell about these issues. We absolutely believe
5 that it is appropriate for him to reach out to us and say,
6 you're the new counsel. Let's talk about what we need to do.

7 Instead of doing that, Mr. Caldwell e-mailed the
8 Court on Thursday, the day before we were engaged, and even on
9 today's call seems to think that the only solution to any of
10 this is a -- is an order of the Court. That is obviously the
11 Court's -- the Court's decision to make.

12 But to answer the question the Court posed, yes,
13 absolutely we are willing to confer with plaintiffs' counsel
14 and iron out, you know, what is to be preserved going forward.

15 THE COURT: All right. Well, all I will say is this.
16 I would never rule on anything as to spoliation, which has so
17 many significant consequences, without a proper motion. But it
18 is normal in this court for parties to engage in discussions
19 regarding protective orders that include preservation terms and
20 to prepare consent orders for the Court to sign in that
21 context. And that is kind of an everyday business. And I
22 think you-all know that.

23 So I wasn't viewing it as -- this item that I have
24 raised as one dealing with spoliation but simply with
25 preservation and protection of the evidence, without making any

1 judgments as to -- as to spoliation claims. But preservation
2 of the evidence for whatever -- you know, for whatever has
3 happened is essential to the integrity of the legal process and
4 if it is, in fact, relevant evidence or potentially relevant
5 evidence.

6 And we just don't know. You know, new counsel,
7 respectfully, you can't know either at this juncture. So that
8 is why I'm encouraging you to do this. Not because of just
9 simply the letter. There was a lot of things going on. I was
10 getting their letter. I was getting new counsel -- new
11 counsel's appearance in the case.

12 It made all of this a lot -- basically rise to the
13 top in saying I need to have a phone call with you-all. So if
14 you can do that this week, that would be extremely helpful.
15 And then you can -- whatever you think at the end of it -- if
16 you don't have any agreement, that is fine. And I mean, it --
17 it is not fine. But that will be the state of things. But I
18 would like you to report basically the fruits of your
19 discussions by next week.

20 MR. CALDWELL: Thank you, Your Honor. This is Joe
21 Caldwell again. And we appreciate that. Number 1, I think we
22 made it clear that we're not filing a spoliation motion before
23 the other court at this time. That was not the purpose of our
24 alerting the Court. It was solely preservation.

25 Secondly is the fact that we are mindful of the

1 Court's standing order. Paragraph 3(e) says that we do have to
2 obtain permission from the Court prior to seeking a protective
3 order. And in some minds a protective order and preservation
4 order there is little distinction.

5 However, that said, I suggest that we as plaintiffs
6 will circulate a draft order to defendants, and we will do that
7 within a day, Your Honor, again in hopes that we can get
8 something to the Court by the end of this week.

9 I look forward to conferences with counsel toward
10 that end with all deliberate speed to get something to the
11 Court by the end of this week to make sure that if there is
12 anything that remains and has not been erased at this point
13 pertaining to that CES server that it can be preserved.

14 THE COURT: All right. Well --

15 MR. BARNES: Your Honor --

16 THE COURT: Yes.

17 MR. BARNES: -- this is Roy Barnes. Could I bring up
18 one other little matter?

19 THE COURT: Yes.

20 MR. BARNES: We think -- we would respectfully
21 request that you consider allowing us to have oral arguments on
22 the motion to dismiss and the issues that are pending before
23 you at an appropriate time that Ms. McConochie or the Court
24 could schedule it for us.

25 THE COURT: Are you going to be able to do it in the

1 next week?

2 MR. BARNES: I can't do it in a week. But, you know,
3 we could -- when do you have time open?

4 THE COURT: Well, I don't have that much time, and we
5 basically have indicated in prior conferences that we were
6 going to be trying to get an order out by the end of November
7 because the case really will -- either should -- either should
8 proceed with discovery expeditiously -- and that was the
9 context of all the Court's conversations with the parties -- or
10 else if it is -- can't -- if there is no jurisdiction, then
11 there is no jurisdiction. That is the end here.

12 So, you know, I don't have my schedule in front of me
13 exactly. Ms. McConochie, of course, is here and does. But if
14 you can do November 17th, which is, I realize, next week, it is
15 a good day. Or we can do it the following Monday if that --
16 no. I'm out the following Monday. So I'm sorry. That is
17 not -- that is not possible.

18 MR. BARNES: We will get with Ms. McConochie later if
19 we see -- we are reviewing everything that has been filed. So
20 if there is something that is obvious that needs to be added,
21 we'll do it expeditiously.

22 THE COURT: All right. Well, again, if you want to
23 appear here on the 17th, that is an option. We can do it.

24 But are you saying you want -- I mean, I have -- I
25 have a huge volume of pages, as you know, that I've allowed.

1 Are you saying you might actually want to petition to add
2 additional arguments and more briefing?

3 MR. BARNES: Well, probably not. But, you know, I
4 would like to read what folks have -- we're going through the
5 same thing you are.

6 THE COURT: Well --

7 MR. BARNES: We want --

8 THE COURT: I'm not going to cross that bridge until
9 it happens. But I -- since every argument conceivable seems to
10 have been raised by the State or the counties, I'm -- I'm
11 loathe to say we should see more paper.

12 I mean, as it is, I would say that you ought to
13 consider things like whether you really are going to stand by
14 some of the arguments that have been made. For instance, on
15 Page 14 of the State defendants' brief in support of their
16 motion to dismiss, the last paragraph before Section C says,
17 finally, plaintiffs seek injunctive relief and damages against
18 Secretary Kemp in his official capacity. All claims for money
19 damages and injunctive relief related to past elections are
20 retrospective and therefore barred.

21 Okay. But does that mean that the State concedes
22 that claims for injunctive relief prospectively are not barred?
23 I mean, I think that is -- are we -- just as a matter of candor
24 with the Court?

25 MR. BARNES: Well, that is what we're hoping for in

1 reviewing it to be able to clear some of that up.

2 We'll get through this as expeditiously as we can.

3 If there is something that absolutely needs to be, we'll file a
4 motion as we think is appropriate.

5 THE COURT: All right. Well -- yeah.

6 MR. HIGHSMITH: Your Honor, for Mr. King, we are
7 available on the 17th.

8 THE COURT: How are the counties? I haven't asked
9 anything of you. Is there anything relative to the counties
10 that -- I assume there might be as to still the question of any
11 preservation.

12 MS. BURWELL: This is Kaye Burwell.

13 MR. WHITE: Kaye, go ahead.

14 MS. BURWELL: I was just going to say nothing for
15 Fulton County.

16 MR. WHITE: Your Honor, Daniel White for Cobb County.
17 I'm not aware of anything at this time. I am going to sit down
18 and have a -- I would be happy to talk through anything with
19 plaintiffs' counsel just to make sure we -- we did -- we also
20 got the multiple versions of preservation letters from
21 different counsel.

22 And so we have attempted to comply with it. But it
23 might be worth it just to sit down and say here is what we have
24 preserved. Do you have any problems with that? So we'll make
25 that effort later this week.

1 THE COURT: Thank you.

2 MR. BRYAN: Your Honor, this is Bennett Bryan on
3 behalf of Dekalb. I will repeat what Mr. White just said. I
4 believe we have resolved those issues with plaintiffs' counsel.

5 But, plaintiffs' counsel, if you believe that there
6 are still outstanding issues that we need to deal with, I'm
7 happy to have a conference call about that. Thank you.

8 THE COURT: All right. Well, Mr. Caldwell, I think
9 that you should reach out to the counties' counsel to make sure
10 that you're all on the same page, given the potential for
11 confusion here. And I don't want confusion to be a source of
12 the problem.

13 MR. CALDWELL: I certainly will, Your Honor. This is
14 Joe Caldwell. I certainly will.

15 THE COURT: Well, in any event, I know you said you
16 were going to get back to me by Friday. But I would like a
17 report by Monday in any event about what -- it can be the close
18 of business but Monday as to what is going on.

19 And I will continue to think about the 17th.

20 MR. BARNES: I'm available on the 17th. We would
21 like to do it in the morning if we could.

22 MR. CALDWELL: Your Honor, this is Joe Caldwell for
23 the plaintiffs. I would have to talk to Mr. Ed Schwartz who is
24 in a deposition and not available today. But I'll circle back
25 to the Court on that.

1 THE COURT: All right.

2 Just one second. I want to check with Ms. McConochie
3 about our schedule for something.

4 **(There was a brief pause in the proceedings.)**

5 THE COURT: All right. Well, Ms. McConochie will
6 circle back. Please hold the 17th for now. And, new counsel,
7 when you are reviewing all the paper, if you find something
8 that you think you can simplify, that is one -- that is
9 something different. If you really, as in the paragraph I just
10 read to you from Page 14, acknowledge that there is a claim,
11 for instance, for injunctive relief prospectively, which you
12 may not, then let's just not be back-ended about it.

13 But if we have oral argument, that is what I'm
14 looking for. And I don't need it in paper. I think you could
15 come acknowledge it. It would be great if you did it in paper.
16 But the whole point is to make this simpler because this case
17 is with the volume of paper that has already been filed
18 extremely complex.

19 MR. BARNES: All right. We'll do that.

20 THE COURT: Are there any -- are there any items that
21 the parties can stipulate to also that is -- and I'm not
22 talking about all sorts of facts -- but maybe procedural
23 history or anything else like that that you want to -- that you
24 can stipulate to?

25 And I know that is much more challenging sometimes.

1 But if you think that there is something that would be helpful
2 to the Court and to the parties in trying to simplify an
3 understanding of what has happened here and you can agree on
4 some stipulated set of facts or description of the procedural
5 posture of the case, that is great. If you can't and it will
6 take more time than it is worth because you don't think you're
7 going to get to much, that is a whole other matter.

8 All right. Thank you very much. And we'll -- we may
9 see you on the 17th. We'll see about that. And thank you for
10 agreeing to meet and try to see what you can do to address and
11 resolve any pending preservation issues.

12 It would be preferable to have a joint report rather
13 than one party or another and people conflicting that. So even
14 if you don't completely agree as to the results of your
15 conversations, you could still have it in one joint report.

16 And I don't see --

17 MR. CALDWELL: This is Joe Caldwell. We'll do so,
18 Your Honor.

19 THE COURT: I don't see any reason why that needs to
20 be more than four pages, excluding the caption. So you can put
21 a caption on the front page. And then if you end up being --
22 being in differing positions, two pages on each side.

23 And if you need -- if you find it is just impossible,
24 then just give -- write a note to Ms. McConochie and tell me
25 what you need. But, really, I'm not looking for pages and

1 pages. I'm just trying to figure out where we're at. And you
2 don't need to be writing pages and pages at this time either.

3 All right. Thank you so much. Have a good day.

4 MR. CALDWELL: Thank you, Your Honor.

5 MR. BARNES: Thank you.

6 MR. HIGHSMITH: Thank you, Judge.

7 **(The proceedings were thereby concluded at
8 11:13 A.M.)**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E
2

3 UNITED STATES OF AMERICA
4

NORTHERN DISTRICT OF GEORGIA
5

6 I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of
7 the United States District Court, for the Northern District of
8 Georgia, Atlanta Division, do hereby certify that the foregoing
9 25 pages constitute a true transcript of proceedings had before
10 the said Court, held in the City of Atlanta, Georgia, in the
11 matter therein stated.

12 In testimony whereof, I hereunto set my hand on this, the
13 7th day of November, 2017.
14

15
16
17 *Shannon R. Welch*
18 SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
19
20
21
22
23
24
25